

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN

W.P.No.27425 of 2013

The Managing Director
Tamil Nadu State Transport Corporation
(Villupuram Division-III)
Ltd., Kancheepuram

..Petitioner

-Vs-

1.The Presiding Officer
I Additional Labour Court
Chennai

2.Tmt.M.Subathra

..Respondent

Prayer:- This Writ Petition is filed, under Article 226 of Constitution of India, to issue a writ of Certiorari to call for the records of the order passed by the 1st respondent in Claim Petition in C.P.No.241 of 2011 dated 04.07.2013 and to quash the same as illegal and by holding that the 2nd respondent is not entitled for any backwages.

For Petitioner : Mr.Rajeni Ramadoss

For Respondents : Mr.T.Karthivelan for R2.
for M/s.S.T.Varadarajulu.

ORDER

The Petitioner/Management has come forward with the above writ petition as against the order passed by the 1st respondent in Claim Petition in C.P.No.241 of 2011 dated 04.07.2013 seeking to quash the same and by holding that the 2nd respondent is not entitled for any backwages.

2.1. The brief facts of the writ petition is that the 2nd respondent's husband/workman, who was working as conductor in the Petitioner corporation was dismissed from service in respect of proven charges. The workman raised Industrial Dispute in I.D.No.31 of 2003 before the I Additional Labour Court, Chennai, and during the pendency of the dispute, the workman died on 21.01.2005. The 2nd respondent herein, wife of the workman got substituted and pursued the I.D. By Award dated 15.02.2008, the

Labour court held that the workman will be entitled to full retiral benefits and that the employee should be given full retirement benefits. It is pointed out by the Labour court that the workman was dismissed from service on 10.12.2001. the workman/conductor died pending I.D. If the deceased conductor continued in service he might have retired during 2008. Thus, the Labour Court granted relief to the wife of the workman.

2.2. The award of the Labour court has not been complied with by the Management. Therefore, the 2nd respondent, earlier approached this court by filing W.P.No.24349 of 2010. The said Writ Petition has been dismissed by this court by order dated 03.12.2010. This court pointed out that since the claim is made by the Petitioner-Subathira based on the Award of the Labour Court, the money claim cannot be decided in the writ petition, however, liberty granted to the petitioner to approach the Labour Court for appropriate relief.

2.3. In view of the dismissal of W.P.No.24349 of 2010 granting liberty to approach the Labour Court, the second respondent herein/wife of the workman filed Claim Petition in C.P.No.241 of 2011 under section 33-C(2) of the I.D.Act, 1947, claiming computation of certain monetary benefits of Rs.3,55,773.90 due.

2.4. The Labour court has allowed the claim of the 2nd respondent and granted the relief and given a finding that the Petitioner in C.P.241/2011-2nd respondent herein is entitled to a sum of Rs.3,55,749/-.

3. The present writ petition has been filed by the Management/Transport Corporation contending that the award passed by the Labour court directing for the payment of full retirement benefits, is without details whether it for backwages or wages from the period of dismissal to the date of award. It is further submitted that without taking into consideration the error in the award of the Labour court, the same has not been complied with by the Management. However, without proper appreciation of the grant of benefits under the Award, the 1st respondent-Labour court allowed the Claim Petition under Section 33(C)(2) of I.D.Act, by means of computation in the claim petition filed by the legal heir of the deceased employee.

4. For better appreciation of the issue herien, paragraph 8 and 9 of the award passed by the Labour Court is extracted as follows:-

"8.Therefore, the findings of the Enquiry Officer has to be held as perverse since the charges were not at all proved. The passengers have not given evidence before the Enquiry Officer. The

petitioner's husband joined duty on 20.12.73 as per Ex.M.11 and his date of birth is 10.6.50. He was dismissed from service on 10.12.2001. Therefore, the total service on the date of dismissal comes to 28 years. The conductor died pending I.D. If the deceased conductor continued in service he might have retired during 2008. The conductor was left without employment from 2001 to 2008 for 7 years. If he was not died, he might have put in 35 years of service. He might have got full retirement benefits from the respondent. Taking into account of the above, the petitioner should be given full retirement benefits. Since this court finds that the termination order has to be set aside, the petitioner is granted full retirement benefits and the points are answered accordingly.

9. In the result, award is passed directing the respondent to give full retirement benefits to the petitioner."

5. The learned counsel appearing for the 2nd respondent, on the other hand contended that the award of the Labour court insofar as the grant of relief of monetary benefits and the same has been computed by the Labour court again in the Claim Petition, has been deprived by the Management since 15.02.2008 and a decade has gone and that it is too late for the Management to challenge the award at this stage and continue to deprive the said benefits to the legal heir of the workman.

6. Heard both sides and perused the records carefully.

7. Even though it has been contended by the Management that the petitioner is not entitled to bonus and other benefits, the Management has restricted the challenge in the writ petition insofar as grant of backwages alone and the amount of backwages as per claim petition works out to Rs.2,23,394/-. The other portion of the claim made by the 2nd respondent herein and awarded by the Labour Court in the claim petition has not been questioned by the Management in the writ petition.

8. Even though the learned counsel for the 2nd respondent/workman contended that entire amount together with backwages as computed by the Labour Court in the Claim Petition No.241/2011 is to be confirmed, I am of the view that since the writ petition is of the year 2013 and the Industrial dispute being resolved by the Labour Court by Award dated 15.02.2004, no useful purpose will be served in the litigation being continued. In any event, grant of backwages in the claim petition towards arrears of wages for the period from 11.12.2011 (date of dismissal) to 02.01.2005 (date of death) at Rs.2,23,394/- is wrongly mentioned and the calculation arrived therein is

perverse and illegal and needs to be interfered with. Even according to both sides, the date of dismissal of the employee is 10.12.2001. Pending I.D., the workman died on 02.01.2005.

9. It is a matter of record that this court by order dated 09.04.2014 passed order in the Miscellaneous Petitions and observed as follows:-

"4. As rightly contended by the learned counsel for the victim, the Labour Court decided the dispute raised on merits and the writ petitioner has not raised any plea regarding backwages in the counter filed during the proceedings before the Labour Court in I.D.No.31 of 2003. Furthermore, as of now, the petitioner has two orders in her favour one in I.D.No.31 of 2003 and another in C.P.No.241 of 2011. In such a view of the matter, this court, in the interest of justice, holds that the writ petitioner is entitled to pay 50% of the amount ordered by the Labour Court. Accordingly, the writ petitioner is directed to pay 50% of the amount as ordered by the Labour Court in C.P.No.241 of 2011 within a period of eight weeks from the date of receipt of copy of this order failing which the interim stay already granted would stand automatically vacated. On compliance of the above direction, the interim stay already granted will be made absolute. Both the petitions are ordered accordingly."

10. However, it is pointed out by the learned counsel for the Petitioner/Management that 50% of the amount ordered by the Labour court is not paid, as per the direction of this court dated 09.04.2014.

11. Though this court is not inclined to impose interest on the sum payable by the Petitioner/Management, as the Petitioner/Management has not complied with the order in paying the 50% of the amount, as directed by this court by order dated 09.04.2014, 6% interest is awarded by this court, at this stage.

12. Taking into consideration the submission made by the learned counsel for the Petitioner and the interim order passed by this court as extracted supra and in the light of the findings of this court mentioned supra, deducting Rs.2,23,394/- from the sum of Rs.3,55,749/-, Rs.1,32,355/- shall be paid by the Petitioner/Management, together with interest at 6% per annum from the date of C.P, within 45 days from the date of receipt of a copy of this order. If the amount as ordered above is not paid within the time stipulated by this court, the interest at 6% shall be payable by the officer who is responsible for making such payment, as this Court, in India

Forge & Drop Stampings Ltd., Vs. Employees' Union, reported in 1991 I LLN 845, had held that merely because an order of the Court could be executed or was capable of being enforced through a manner known to law, it does not allow the party disobeying that order to escape the consequence of wilful disobedience of the order under the Contempt of Court Act, 1971.

nvsri

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

To

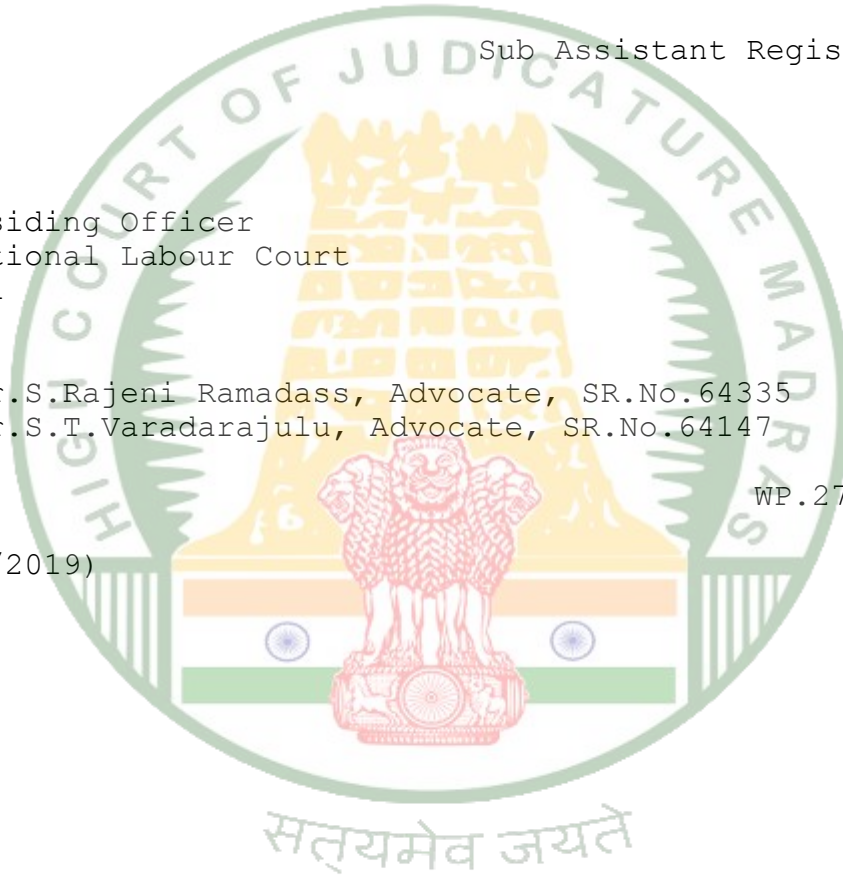
1.The Presiding Officer
I Additional Labour Court
Chennai

+lcc to Mr.S.Rajeni Ramadass, Advocate, SR.No.64335

+lcc to Mr.S.T.Varadarajulu, Advocate, SR.No.64147

WP.27425 of 2013

Kak(18/09/2019)



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